

APPEAL NO. 032759
FILED DECEMBER 11, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 4, 2003. In Texas Workers' Compensation Commission Appeal No. 031842, decided August 25, 2003, the Appeals Panel affirmed the hearing officer's determinations that the respondent (claimant) sustained a compensable injury on _____; that the claimant had disability from January 29 through May 28, 2003; that the appellant (carrier) is not relieved of liability because the claimant was not in a state of intoxication; and that the carrier waived the right to contest compensability of the claimed injury by failing to contest the injury in accordance with Section 409.021. The Appeals Panel reversed the hearing officer's determination that limited the claimant's compensable injury to a right knee injury only, and rendered a decision that the claimant's compensable injury includes his right knee, lower back, and neck due to the carrier's waiver of the right to contest compensability. The Appeals Panel reversed the hearing officer's determination that ended the claimant's period of disability on May 28, 2003, and remanded the disability issue to the hearing officer for the hearing officer to make a determination as to whether the claimant had disability after May 28, 2003, based on the compensable injury to the claimant's right knee, lower back, and neck. No CCH was held on remand. The hearing officer considered the record developed at the CCH held on June 4, 2003, to resolve the remanded issue regarding disability after May 28, 2003. In the decision on remand, the hearing officer determined that the claimant had disability from May 28, 2003, and continuing through the date of the CCH. The carrier appeals the hearing officer's decision on remand that the claimant had disability from May 28, 2003, and continuing through the date of the CCH. The carrier also reurges its previous appeal of the hearing officer's determinations on the issues of compensable injury, intoxication, carrier waiver, and disability for the period of January 29 through May 28, 2003. The claimant asserts that the evidence supports the hearing officer's decision.

DECISION

Affirmed.

With regard to the remanded disability issue, the claimant had the burden to prove that he had disability as defined by Section 401.011(16). The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence in this case, the hearing officer's decision on remand that the claimant had disability from May 28, 2003, and continuing through the date of the CCH is supported by the claimant's testimony and by the reports of the treating doctor. We conclude that the hearing officer's decision on remand is supported by sufficient evidence and that it is not so

against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

With regard to the carrier's reurged points on appeal regarding the issues of compensable injury, intoxication, disability for the period of January 29 through May 28, 2003, and carrier waiver, those issues were addressed and decided in Appeal No. 031842, *supra*, and we decline to change our decision on those issues.

We affirm the hearing officer's decision and order on remand.

The true corporate name of the insurance carrier is **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300
IRVING, TEXAS 75063.**

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Edward Vilano
Appeals Judge